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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/935,030

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Charles H. Fintel

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EXAMINER

MANOSKEY, JOSEPH D

ART UNIT

PAPER NUMBER

2113

DATE MAILED: 05/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/935,030

Applicant(s)

FINTEL ET AL.

Examiner

Joseph Manoskey

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2113

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 August 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Oath/Declaration***

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:  
Non-initialed and/or non-dated alterations have been made to the oath or declaration. See 37 CFR 1.52(c).

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 23-33 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The limitation of claim 23, in line 10, "software storage medium", is non-statutory subject matter. The limitation should be changed to read "computer readable medium".

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

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applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claim 1-3, 5-15, 17-26, and 28-33 are rejected under 35 U.S.C. 102(e) as being anticipated by Herrbach et al., U.S. Patent 6,269,150, hereinafter referred to as "Herrbach".

6. Referring to claim 1, Herrbach teaches a method of automated testing of a communications system (See Col. 1, lines 9-10 and lines 60-61). Herrbach also discloses the testing system having a suite of tests in library procedure repository, this is interpreted as a plurality of tests in a test database, and running them sequentially, which is interpreted as selecting a first test (See Col. 3, lines 26-31 and Col. 5, lines 46-47). Herrbach teaches attempting acquiring certain resources for the test, this is interpreted as identifying a communication resource for a test and determining if the communication resource is available (See Col. 3, lines 56-57 and Col. 5, lines 2-3). Finally, Herrbach discloses running the test after the resource has been acquired, this is interpreted as generating a execute instruction for the test in response to the resource to the being available (See Col. 5, lines 14-16).

7. Referring to claim 2, Herrbach teaches storing and the test procedures in a library procedure repository and also skipping tests when no working resources are available (See Col. 3, lines 28-31 and Col. 6, lines 20-22). This is interpreted as storing

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the test back in the test database in response to the communication resource not being available.

8. Referring to claim 3, Herrbach discloses a suite of tests in the library repository (See Col. 3, lines 26-31). This is interpreted as receiving a plurality of tests for storage in the test database.

9. Referring to claim 5, Herrbach teaches attempting acquiring certain resources for the test, this is interpreted as determining if the request is for general use of the communication resource (See Col. 3, lines 56-57 and Col. 5, lines 2-3).

10. Referring to claims 6-9, Herrbach discloses the testing system having a suite of tests in library procedure repository, this is interpreted as a plurality of tests in a test database, and running them sequentially, which is interpreted as selecting a second test (See Col. 3, lines 26-31 and Col. 5, lines 46-47). Herrbach teaches attempting acquiring certain resources for the test, this is interpreted as identifying a communication resource for a test and determining if the communication resource is available (See Col. 3, lines 56-57 and Col. 5, lines 2-3). Finally, Herrbach discloses running the test after the resource has been acquired, this is interpreted as generating a execute instruction for the test in response to the resource to the being available (See Col. 5, lines 14-16).

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11. Referring to claim 10, Herrbach teaches storing and the test procedures in a library procedure repository and also skipping tests when no working resources are available (See Col. 3, lines 28-31 and Col. 6, lines 20-22). This is interpreted as storing the test back in the test database in response to the communication resource not being available.

12. Referring to claim 11, Herrbach teaches an automated testing of a communications system, this is interpreted as a resource management system (See Fig. 1 and Col. 1, lines 9-10 and lines 60-61). Herrbach also discloses the testing computer having a suite of tests in library procedure repository, this is interpreted as a processor system coupled to a plurality of tests in a test database, and running them sequentially, which is interpreted as selecting a first test (See Col. 3, lines 26-31 and Col. 5, lines 46-47). Herrbach teaches attempting acquiring certain resources for the test, this is interpreted as identifying a communication resource for a test and determining if the communication resource is available (See Col. 3, lines 56-57 and Col. 5, lines 2-3). Finally, Herrbach discloses running the test after the resource has been acquired, this is interpreted as generating a execute instruction for the test in response to the resource to the being available (See Col. 5, lines 14-16).

13. Referring to claim 12, Herrbach teaches storing and the test procedures in a library procedure repository and also skipping tests when no working resources are available (See Col. 3, lines 28-31 and Col. 6, lines 20-22). This is interpreted as storing

the test back in the test database in response to the communication resource not being available.

14. Referring to claim 13, Herrbach discloses a suite of tests in the library repository (See Col. 3, lines 26-31). This is interpreted as receiving a plurality of tests for storage in the test database.

15. Referring to claim 14, Herrbach teaches the results of the entire suite of test being reported to the test computer for storage and display (See Col. 5, lines 57-58). This is interpreted as processing system configured to transfer test results of the test to the test system.

16. Referring to claim 15, Herrbach discloses test computer coupled to a test resources database (See Fig. 1 and Col. 3, lines 22-25). This is interpreted as a resource database that stores a list of the communication resources.

17. Referring to claim 17, Herrbach teaches attempting acquiring certain resources for the test, this is interpreted as determining if the request is for general use of the communication resource (See Col. 3, lines 56-57 and Col. 5, lines 2-3).

18. Referring to claims 18-21, Herrbach discloses the testing computer having a suite of tests in library procedure repository, this is interpreted as a processor system

coupled to a plurality of tests in a test database, and running them sequentially, which is interpreted as selecting a second test (See Col. 3, lines 26-31 and Col. 5, lines 46-47). Herrbach teaches attempting acquiring certain resources for the test, this is interpreted as identifying a communication resource for a test and determining if the communication resource is available (See Col. 3, lines 56-57 and Col. 5, lines 2-3). Finally, Herrbach discloses running the test after the resource has been acquired, this is interpreted as generating a execute instruction for the test in response to the resource to the being available (See Col. 5, lines 14-16).

19. Referring to claim 22, Herrbach teaches storing and the test procedures in a library procedure repository and also skipping tests when no working resources are available (See Col. 3, lines 28-31 and Col. 6, lines 20-22). This is interpreted as storing the test back in the test database in response to the communication resource not being available.

20. Referring to claim 23, Herrbach teaches an automated testing of a communications system having library procedure repository for storing software that is computer-executable, this is interpreted as a software product for managing the testing of a communication system on a software storage medium (See Fig. 1, Col. 1, lines 9-10 and Col. 1 line 60 to Col. 2, line 9). Herrbach also discloses the testing computer having a suite of tests in library procedure repository, this is interpreted as a processor system coupled to a plurality of tests in a test database, and running them sequentially,



which is interpreted as selecting a first test (See Col. 3, lines 26-31 and Col. 5, lines 46-47). Herrbach teaches attempting acquiring certain resources for the test, this is interpreted as identifying a communication resource for a test and determining if the communication resource is available (See Col. 3, lines 56-57 and Col. 5, lines 2-3). Finally, Herrbach discloses running the test after the resource has been acquired, this is interpreted as generating a execute instruction for the test in response to the resource to the being available (See Col. 5, lines 14-16).

21. Referring to claim 24, Herrbach teaches storing and the test procedures in a library procedure repository and also skipping tests when no working resources are available (See Col. 3, lines 28-31 and Col. 6, lines 20-22). This is interpreted as storing the test back in the test database in response to the communication resource not being available.

22. Referring to claim 25, Herrbach discloses a suite of tests in the library repository (See Col. 3, lines 26-31). This is interpreted as receiving a plurality of tests for storage in the test database.

23. Referring to claim 26, Herrbach discloses test computer coupled to a test resources database (See Fig. 1 and Col. 3, lines 22-25). This is interpreted as a resource database that stores a list of the communication resources.

24. Referring to claim 28, Herrbach teaches attempting acquiring certain resources for the test, this is interpreted as determining if the request is for general use of the communication resource (See Col. 3, lines 56-57 and Col. 5, lines 2-3).

25. Referring to claims 29-32, Herrbach discloses the testing computer having a suite of tests in library procedure repository, this is interpreted as a processor system coupled to a plurality of tests in a test database, and running them sequentially, which is interpreted as selecting a second test (See Col. 3, lines 26-31 and Col. 5, lines 46-47). Herrbach teaches attempting acquiring certain resources for the test, this is interpreted as identifying a communication resource for a test and determining if the communication resource is available (See Col. 3, lines 56-57 and Col. 5, lines 2-3). Finally, Herrbach discloses running the test after the resource has been acquired, this is interpreted as generating a execute instruction for the test in response to the resource to the being available (See Col. 5, lines 14-16).

26. Referring to claim 33, Herrbach teaches storing and the test procedures in a library procedure repository and also skipping tests when no working resources are available (See Col. 3, lines 28-31 and Col. 6, lines 20-22). This is interpreted as storing the test back in the test database in response to the communication resource not being available.

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27. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

28. Claims 4, 16, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herrbach et al. in view of Grey et al., U.S. Patent Application Publication US 2002/0124205, hereinafter referred to as "Grey".

29. Referring to claims 4, 16, and 27, Herrbach teaches all the limitations (See rejections of claims 1, 11, and 23 respectively) except for determining if the test requests exclusive use of a communication resource, however Herrbach does teach the test computer being a multitasking computer that can run multiple parallel testing processes (See Col. 3, lines 1-10). Grey discloses computer-based testing of products (See page 1, paragraph 1) that includes using a "mutex" that guarantees exclusive access to shared resources, this is interpreted as determining if a test needs exclusive access and then supplying it (See page 1, paragraph 5). It would be obvious to one of ordinary skill in the art at the time of the invention to combine the testing system of Herrbach with the exclusive access to resources of Grey. This would be obvious to one of ordinary skill in the art at the time of the invention because it allows synchronization among multiple processes (See Grey, page 1, paragraph 5).

### ***Conclusion***

30. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following are closely related automated testing systems.

U.S. Patent 6,560,554 to Anderson

U.S. Pat. App. Pub. US 2001/0052089 to Gustavsson et al.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Manoskey whose telephone number is (703) 308-5466. The examiner can normally be reached on Mon.-Fri. (8am to 4:30pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (703) 305-9713. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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